

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

**In the Matter of:**

<b>Request for Review by Cass County</b>	<b>)</b>	
<b>Telephone Company (SAC 42027) of</b>	<b>)</b>	
<b>Decision by the Universal Service</b>	<b>)</b>	<b>CC Docket No. 96-45</b>
<b>Administrative Company To Suspend</b>	<b>)</b>	
<b>High-Cost Support Payments</b>	<b>)</b>	

**Comments of the Kansas Corporation Commission**

1. The Kansas Corporation Commission (“KCC”) hereby submits comments in response to the Federal Communications Commission’s (“Commission”) Public Notice,<sup>1</sup> released February 2, 2005 in the above referenced docket. The Public Notice seeks comments on Cass County Telephone Company’s (“Cass County”) Request for Review<sup>2</sup> of the Universal Service Administrator’s (“USAC”) November 5, 2004 decision to suspend the company’s high-cost universal service payments.<sup>3</sup> The KCC is the agency in the State of Kansas with jurisdiction to regulate intrastate activities of telecommunications carriers operating in the State of Kansas. Cass County, headquartered in Peculiar, Missouri, serves approximately 400 customers in east-central Kansas, and received federal universal service support for these customers. As such, the KCC is an interested party to the proceeding.

2. Cass County states that USAC relied on an October 15, 2004 letter from the Wireline Competition Bureau (“Bureau”) directing USAC to suspend all monthly support,

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<sup>1</sup> Public Notice, Wireline Competition Bureau Seeks Comment on Appeal of Cass County Telephone Company Concerning A Decision of the Universal Service Administrator to Suspend its High-Cost Universal Service Payments, CC Docket No. 96-45, DA 05-282, released February 2, 2005. (Public Notice)

<sup>2</sup> January 4, 2005 letter from E. Ashton Johnson, Cass County’s Counsel, to Mr. Jeffrey J. Carlisle, Federal Communications Commission (Request for Review).

<sup>3</sup> November 5, 2004 letter from Irene M. Flannery, Universal Service Administrative Company to Kenneth Matzdorff, Cass County (USAC November 5, 2004 letter).

including Lifeline, high-cost loop, safety net additive, interstate common line and local switching support, to Cass County,<sup>4</sup> and on the Bureau's October 22, 2004 letter directing USAC to continue monthly Lifeline disbursements to Cass County.<sup>5</sup> USAC's November 5, 2004 letter informed Cass County that all high cost support payments would be suspended, effective with the September 2004 payments, and that Cass County could appeal the decision within 60 days.

3. Cass County's Request for Review states the Missouri Public Service Commission (MoPSC) certified Cass County for 2004 support in its September 25, 2003 letter; therefore, it is improper to discontinue the company's remaining 2004 payments based on the MoPSC's September 30, 2004 letter. Cass County further contends that since the MoPSC only submitted a letter declining to certify Cass County and did not offer findings or evidence that Cass County would not use federal support for its intended purposes in 2005, the MoPSC did not have a basis for declining to certify Cass County.<sup>6</sup> Cass County states it submitted information requested by the MoPSC and complied with the MoPSC's certification procedures, therefore, its 2005 federal universal service support must be reinstated.<sup>7</sup>

4. Cass County contends the suspension of its high-cost support payments violates the company's substantive and procedural due process rights and its ability to provide telecommunications services to customers.<sup>8</sup> Cass County requests that the Bureau's decisions be reversed and that USAC be directed to provide support payments withheld for 2004 and 2005.

5. Section 54.314(a), states:

States that desire rural incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a rural incumbent

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<sup>4</sup> October 14, 2004 letter from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, to Ms. Irene Flannery, Vice President, High Cost & Low Income Division, USAC (October 15, 2004 WC Bureau letter)

<sup>5</sup> October 22, 2004 letter from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, to Ms. Irene Flannery, Vice President, High Cost and Low Income Division, USAC (October 22, 2004 WC Bureau letter)

<sup>6</sup> Request for Review, pp. 3-4.

<sup>7</sup> Id.

<sup>8</sup> Id.

local exchange carrier within their jurisdiction to receive support pursuant to §§ 54.301, 54.305, and/or 54.307 of this part and/or part 36, subpart F of this chapter must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to §§ 54.301, 54.305, and/or 54.307 of this subpart and/or part 36, subpart F of this chapter shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.

6. Section 54.314(c) states that certification “may be filed in the form of a letter from the appropriate regulatory authority for the State . . . . If provided by the appropriate regulatory authority for the state, the annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers will only use support for the provision, maintenance, and upgrading of facilities and services for which support is intended . . . .”

7. The KCC supports the MoPSC’s decision not to certify Cass County for federal universal service support purposes for 2005, as well as the Bureau’s decision to suspend Cass County’s high-cost support payments, effective with the September 2004 payments. Cass County’s claim that a state commission must support its decision with findings or evidence is contrary to the Commission’s rules, which allow a state to submit a letter regarding the certification. The Commission’s rules only require that the letter identify those carriers eligible to receive support; the rules do not require a state to identify carriers the state commission declines to certify. However, as discussed further below, both the MoPSC and the KCC had evidence before them upon which to base their decisions not to certify Cass County.

8. First, to comply with Commission rules, the MoPSC<sup>9</sup> and the KCC adopted certification procedures for federal high-cost support funds. On January 21, 2001, the KCC issued an order opening Docket No. 01-GIMT-595-GIT to determine a process for certifying

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<sup>9</sup> July 9, 2002 Order Establishing Certification Procedure, Case No. TO-2002-347.

companies for federal universal service purposes. Based on a collaborative effort with the Kansas telecommunications industry, the KCC adopted a certification process on August 28, 2001.<sup>10</sup> On August 13, 2004, the KCC opened Docket No. 05-GIMT-112-GIT to review its process for certifying companies.<sup>11</sup> Consistent with the KCC's procedures, Cass County submitted its self-certification form, signed by Mr. Kenneth Matzdorff, in Docket No. 05-GIMT-112-GIT on September 9, 2004.

9. That certification did not; however, adequately address the commission's concerns arising from public information about Cass County and Mr. Matzdorff. A February 14, 2004 Kansas City Star article reported a federal indictment for USP&C, a billing aggregator for telephone companies, located in Overland Park, Kansas. The article further reported that USP&C and LEC, LLC had "links to Matzdorff" and that these companies were "at the heart of" a nation-wide phone and Internet scheme.<sup>12</sup> Mr. Matzdorff, Cass County's president, was arrested on July 27, 2004, pursuant to a federal arrest warrant. The allegations supporting Mr. Matzdorff's arrest concerned fraudulent activities, beginning in 1996 and occurring over a period of time. The MoPSC and the KCC were also aware of an August 23, 2004 Consent Notice of Prohibition against Mr. Matzdorff.<sup>13</sup>

10. Both the MoPSC and the KCC opened investigations of Cass County.<sup>14</sup> Based on a request from Cass County's counsel, the MoPSC and KCC Staff collaborated on their

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<sup>10</sup> August 28, 2001 Order No. 3: Adopting Certification Process, Docket No. 01-GIMT-595-GIT.

<sup>11</sup> August 13, 2004 Order Opening Docket and Assessing Costs, Docket No. 05-GIMT-112-GIT.

<sup>12</sup> "Belton exec linked to phone scam, Kenneth Matzdorff has ties to firms listed in indictment." Kansas City Star, February 14, 2004.

<sup>13</sup> United States of America Before the Board of Governors of the Federal Reserve System Washington, D.C. "*In the Matter of Kenneth M. Matzdorff, An Institution-Affiliated part of Garden City Bancshares, Inc., Garden City, Missouri, a Bank Holding Company.*" Docket No. 04-020-G-I, Notice of Prohibition Issued Upon Consent Pursuant to Section 8(g)(A) of the Federal Deposit Insurance Act, as Amended.

<sup>14</sup> "State regulators to take second look at Cass Co. Telephone." The Business Journal of Kansas City, July 29, 2004, and KCC's August 6, 2004 Order 1: Opening Docket, Assessing Costs and Directing Cass County Telephone to Furnish Information, Docket No. 05-GIMT-094-GIT, respectively.

investigations of Cass County, and received information from Cass County regarding the company's ownership and operations. LEC, LLC is the majority owner and managing partner of Cass County. LEC, LLC employees perform services for Cass County, with Cass County paying LEC, LLC for those services. In an August 25, 2004 letter, Cass County stated Mr. Matzdorff, an owner of LEC, LLC and one of three executive officers for LEC, LLC, had overall responsibility for conducting business on behalf of Cass County.<sup>15</sup> Furthermore, Cass County's annual reports, for the years-ended December 31, 2002 and 2003, submitted to the KCC, show Cass County paid LEC, LCC over \$5.1 million in 2002 for services, and over \$7.1 million in 2003 for services.

11. Based on the information available to the state commissions, the KCC and the MoPSC declined to certify Cass County for federal universal service support purposes. However, both state commissions are providing Cass County the opportunity to show it would use federal support monies in an appropriate manner. The KCC notes that its order opening its investigation of Cass County directed the company to provide its 2003 audited statements. Cass County's August 25, 2004 letter stated the 2003 audited financial statements would be available after September 2004. These audited statements have not been provided to the KCC at this time. Upon Cass County showing that it will use federal support in a manner consistent with Section 254(e), the KCC will reconsider the certification of Cass County.

12. On January 7, 2005, Kenneth Matzdorff pleaded guilty in the United States District Court for the Eastern District of New York to wire fraud and conspiracy to commit money laundering.<sup>16</sup> On January 18, 2005, Mr. Matzdorff pleaded guilty to conspiracy to

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<sup>15</sup> August 25, 2004 letter from Mr. Peter Mirakian III, Spencer Fane Britt & Browne, to Mr. Bret Lawson, Assistant General Counsel, Kansas Corporation Commission.

<sup>16</sup> January 26, 2005 letter from Peter Mirakian III, Spencer Fain Britt & Browne, LLP to Mr. Brett Lawson, Assistant General Counsel, Kansas Corporation Commission.

commit wire and mail fraud, and acknowledged he participated in a scheme to defraud USAC and the National Exchange Carriers Association (“NECA”).<sup>17</sup> On February 14, 2005, six additional owners of LEC, LLC, pleaded guilty to charges relating to an Internet and cramming scheme, with some of the defendants expected to plead guilty to charges regarding defrauding the federal universal service fund.<sup>18</sup>

13. These events show that the KCC and the MoPSC had a sufficient basis for declining to certify Cass County for federal USF purposes. Furthermore, the KCC believes state regulators have a duty to help protect the integrity of the federal support mechanisms. Consistent with the Commission’s rules delegating certification authority to the states, the state commissions exercised their duty, as well as their responsibility to protect the public interest, when they declined to certify Cass County for federal support purposes. These decisions are supported by Mr. Matzdorff’s admission to defrauding USAC and NECA through July 2004. It appears Cass County received more federal support monies than it legally was entitled to, thus, the Bureau’s decision to suspend Cass County’s 2004 federal support, effective with the September 2004 payment, should not be reversed until the correct level of such support can be determined and verified.

14. Consistent with the Commission’s rules, the Bureau’s decision to suspend support for 2005 should not be reversed until both state commissions having authority over Cass County’s operations submit letters certifying that Cass County will use its federal support monies in a manner consistent with Section 254(e). Cass County has not demonstrated error by the KCC in declining to certify Cass County for federal support purposes. The KCC will continue to

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<sup>17</sup> “Guilty plea is second for Matzdorff”, The Kansas City Star, January 19, 2005 at [www.kansascity.com/mld/kansascity/business/106765643.htm](http://www.kansascity.com/mld/kansascity/business/106765643.htm).

<sup>18</sup> “Mobsters Plead Guilty to N.Y. Phone Scam”, Yahoo! News, February 15, 2005, [http://story.news.yahoo.com/news?tmpl=story&u+ap/20050215/ap\\_on\\_re\\_us/phone\\_com](http://story.news.yahoo.com/news?tmpl=story&u+ap/20050215/ap_on_re_us/phone_com).

allow Cass County an opportunity to show it will use any federal support received in a manner consistent with Section 254(e). If Cass County shows it will use the federal support monies in such a manner, the KCC will reconsider its certification of Cass County. The KCC recommends Cass County's Request for Review be denied.

15. Although the Bureau's letters reference the MoPSC's decision to not certify Cass County, both the MoPSC and the KCC have jurisdiction over lines served by Cass County. In a situation where more than one state commission has jurisdiction over a company's lines, the KCC believes the Commission should rely on certifications from all state commissions with jurisdiction. If only one state's certification is relied on, it is possible that all high-cost support would be used only for customers in that state, even though loops for which high-cost support is received are located and served in a different state's jurisdiction. In the instant case, the reliance on only the MoPSC's certification could result in all federal universal service support monies being used only for customers serviced in Missouri, even though federal support monies are paid for Kansas jurisdictional loops served by Cass County pursuant to the KCC's authority.

For the Commission:

/s/ Brian J. Moline  
Brian J. Moline, Chair

/s/ Robert E. Krehbiel  
Robert E. Krehbiel, Commissioner

/s/ Michael C. Moffet  
Michael C. Moffet, Commissioner